

11 WINIFRED JIAU,

12 Plaintiff, No. C 13-0248 WHA (PR)

13 vs.

14 KAIRE POOLE; RANDY TEWS,

15 Defendant.

**16 ORDER REVOKING IN FORMA  
PAUPERIS STATUS FOR APPEAL**

17 Plaintiff, a federal prisoner incarcerated at the Federal Correctional Institute in Dublin,  
18 California, filed this civil rights case in which she complains that she was wrongfully expelled  
19 from the residential drug abuse treatment program. Because she stated in her complaint that the  
20 expulsion from the program “resulted [in] the plaintiff no longer [being] eligible for a 12-month  
21 early release,” the complaint was dismissed without prejudice to refile in a habeas case  
22 because her claims implicate the duration of her confinement and success would entitle her to  
23 reinstatement in the program and earlier release. *See Skinner v. Switzer*, 131 S. Ct. 1289, 1293  
24 (2011). Plaintiff’s subsequent motions for reconsideration and relief from judgment were  
25 denied because she did not indicate in those motions that the expulsion from the drug treatment  
26 programs did not affect the duration of her confinement. She appealed both the judgment and  
27 the denial of her post-judgment motions. Our court of appeals has referred the case for a  
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1 determination of whether in forma pauperis status should be revoked under 28 U.S.C.  
2 1915(a)(3) because the appeal is frivolous or taken in bad faith. The appeal is frivolous because  
3 it is clear from plaintiff's papers that her placement in the program affect the duration of her  
4 confinement such that success on her claims would entitle her to earlier release, and therefore  
5 that the claims should be brought in a habeas petition not a civil rights complaint. Accordingly,  
6 in forma pauperis status is **REVOKE**.

7 **IT IS SO ORDERED.**

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9 Dated: April 8, 2013.

Wm. Alsup  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE